



**ZONING ADMINISTRATOR
NOTICE OF DECISION**

Date: September 18, 2015
Applicant: Smartlink for T-Mobile Wireless
Case No.: PCC-15-017
Address: Windingwalk Marketplace, 2110 Birch Road
Project Planner: Harold Phelps, AICP

Notice is hereby given that on September 18, 2015 the Zoning Administrator considered Conditional Use Permit (CUP) application PCC-15-017, filed by Smartlink on behalf of T-Mobile Wireless ("Applicant"). The Applicant requests the CUP to provide a new Wireless Telecommunications Facility (WTF) at the Windingwalk Marketplace ("Project"). The Project is located at 2110 Birch Road ("Project Site"), owned by Windingwalk Marketplace, LLC ("Property Owner"). The Project Site is zoned Mixed Use (MU) in the Windingwalk Village Eleven Sectional Planning Area (SPA) Plan. The General Plan designates the site Mixed Use (MU) on the Land Use Diagram as part of the Otay Ranch General Development Plan Village Eleven Village Core.

The Applicant requests installation of 16 panel antennas inside the existing cupola tower above the corner commercial building where a Denny's restaurant is currently located, with 4 equipment cabinets located on the adjacent building rooftop within an enclosure. The antennas will be mounted within the cupola, completely concealed from view and located behind transparent screening painted to match the existing cupola. The equipment will also be screened from view, located below the existing roof parapets.

Planning Staff has reviewed the Project for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the Project qualifies for a categorical exemption pursuant to Section 15303-C (small structures on existing developed sites) of the State CEQA Guidelines. No further environmental review is necessary.

The Zoning Administrator, under the provisions of Sections 19.14.030.A and 19.89 of the Chula Vista Municipal Code (CVMC), and the Otay Ranch Village Eleven SPA Plan has been able to make the findings for approval of this conditional use permit as required by CVMC Section 19.14.080:

- 1. That the proposed use at this location is necessary or desirable and will contribute to the general well-being of the neighborhood or the community.**

Telecommunication service in the area will be improved by the new facility and provide a public convenience at this location. The proposed wireless telecommunication facility and equipment areas will be screened by existing architectural features. The location of this facility will not interfere with commercial activities. The facility will improve the general well-being of the surrounding communities by ensuring uninterrupted wireless service.

2. **That such use will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity.**

The telecommunication land use provides the wireless communication company greater reliability in the coverage area, including improved emergency telecommunications that will improve the health, safety, and general welfare of persons residing or working in the vicinity.

3. **That the proposed use will comply with the regulations and conditions specified in the code for such use.**

The CUP requires the Applicant and Property Owner to fulfill conditions of approval and maintain compliance with all applicable regulations and standards specified in the City's Wireless Ordinance of the CVMC for such use. The use will be built in compliance with the City's Wireless Ordinance development criteria and all other City zoning and building regulations. The conditions of this permit are approximately in proportion to the nature and extent of the impact created by the use in that the conditions imposed are directly related to, and of a nature and scope related to the size and impact of the use. The use complies with all regulations and conditions specified in the CVMC as established under this Conditional Use Permit PCC-15-017.

4. **That the granting of this Conditional Use Permit will not adversely affect the General Plan of the City or the adopted plan of any government agency.**

The integration of wireless facilities within existing land uses helps to achieve the General Plan's Public Facilities and Services Element (PFS) 24.2 Objective. The Project is considered a "stealth" installation, utilizing an existing commercial building and tower feature that conceal its presence on the project site. The Project allows for the future co-location of other WTF facilities on this building and in the Marketplace shopping center.

BASED ON THE FINDINGS ABOVE, THE ZONING ADMINISTRATOR hereby approves Conditional Use Permit PCC-15-017, as described above subject to the following conditions of approval:

- I. **Prior to the approval by the City of Chula Vista for the use of the subject property in reliance upon this approval, the Applicant shall satisfy the following requirement:**

1. The Applicant/Representative and Property Owner shall execute this document by making a true copy and signing both this original Notice of Decision and the copy on the lines provided below, said execution indicating that the Applicant/Representative and Property Owner have each read, understood and agreed to the conditions contained herein, and will implement same. Upon execution, the true copy with original signatures shall be returned to the Development Services Department. Failure to return the signed true copy of this document within 30 Days of the effective date herein shall indicate the Applicant/Representative and Property Owner's desire that the project, and

corresponding application for building/grading permits and/or business license, be held in abeyance without approval.

Signature of Applicant/Authorized Representative

Date

Signature of Property Owner/representative

Date

2. The Applicant shall maintain the Project in accordance with the approved plans for PCC-15-017, date stamped approved on September 18, 2015, which includes a site plan and architectural elevations on file in the Planning Division, the conditions contained herein, and Title 19. Building permit plans for the equipment enclosure include a concrete block wall enclosing the emergency generator to attenuate noise emissions to the surrounding residential neighborhood.

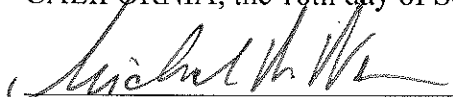
II. The following on-going conditions shall apply to the Project as long as it relies upon this approval.

3. Approval of this Project shall not waive the Applicant's responsibility to comply with all applicable sections of Title 19 of the Chula Vista Municipal Code (CVMC), and all other applicable City Ordinances in effect at the time of building permit issuance or the approval of this Conditional Use Permit.
4. The Applicant shall execute this Conditional Use Permit as the authorized use only. Any new use or modification/expansion of uses shall be subject to the review and approval of the Zoning Administrator.
5. The Applicant shall cooperate with telecommunications companies in co-locating additional antennas on subject property provided said co-locators have received a Conditional Use Permit for such use at said site from the City. Applicant shall exercise good faith in co-locating with other communications companies and sharing the permitted site, provided such shared use does not give rise to a substantial technical level- or quality-of-service impairment of the permitted use (as opposed to a competitive conflict or financial burden). In the event a dispute arises as to whether Applicant has exercised good faith in accommodating other users, the City may require a third party technical study at the expense of the Applicant.
6. Within 90 days of cessation of the business operations and use of the antennas, the Applicant shall submit a substitute user to the satisfaction of the Director of Development Services and/or remove the Project and all associated equipment from the Project Site. If the facility is removed, then the Applicant shall restore the Project Site to its original

condition. Any changes on this Conditional Use Permit shall require a modification to be reviewed by the Zoning Administrator.

7. The Applicant/Representative and Property Owner shall and does hereby agree to indemnify, protect, defend and hold harmless City, its City Council members, officers, employees and representatives, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees (collectively, liabilities) incurred by the City arising, directly or indirectly, from (a) City's approval and issuance of this Conditional Use Permit, (b) City's approval or issuance of any other permit or action, whether discretionary or non-discretionary, in connection with the use contemplated herein, and Applicant/operator shall acknowledge their agreement to this provision by executing a copy of this Conditional Use Permit where indicated above. The Applicant/Representative and Property Owner's compliance with this provision is an express condition of this Conditional Use Permit and shall be binding on any and all of Applicant/Operator's successors and assigns.
8. Any violations of the terms and conditions of this permit may result in the imposition of civil or criminal penalties and/or the revocation or modification of this permit.
9. If any of the foregoing conditions fail to occur, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted, deny, or further condition issuance of all future building permits, deny, revoke, or further condition all certificates of occupancy issued under the authority of approvals herein granted, institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. Applicant or a successor in interest gains no vested rights by the City's approval of this Conditional Use Permit.
10. This Conditional Use Permit shall expire on September 18, 2025, ten (10) years from the date of this Zoning Administrator approval. The Applicant may request an extension 30 days prior to expiration date from this Conditional Use Permit approval. The Zoning Administrator shall review this use for compliance with the conditions of approval and any applicable codes and regulation, and shall determine, in consultation with the Applicant, whether the Project shall be modified from its original approval, denied or extended.

APPROVED BY ZONING ADMINISTRATOR OF THE CITY OF CHULA VISTA, CALIFORNIA, the 18th day of September 2015.


Michael Walker, Zoning Administrator